



# California Fair Political Practices Commission

May 19, 1989

Robert E. Leidigh  
Olson, Connelly, Hagel & Fong  
300 Capitol Mall, Suite 350  
Sacramento, CA 95814

Re: Your Request for Advice  
Our File No. A-89-247

Dear Mr. Leidigh:

On behalf of your client, The Nature Conservancy, you have requested confirmation of telephone advice provided to you regarding the lobbying provisions of the Political Reform Act.<sup>1/</sup>

Your letter correctly states the advice provided to you by Colleen McGee as follows:

(1) Discussion of pending or potential legislation with an administrative agency official does not constitute attempting to influence legislative or administrative action, even with regard to budget items. (Pessner Advice Letter, No. I-87-174, copy enclosed.)

However, discussion with the Governor's Office regarding signing, approving or vetoing legislation, including budget items, is clearly within the definition of "influencing legislative or administrative action" in Section 82037.

(2) An inquiry of a legislator or a legislator's staff regarding the legislator's position on pending or potential legislation does not constitute attempting to "influence legislative or administrative action," as that term is defined in Section 82037. However, further discussion of the legislation may be attempting to influence legislative action.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

Robert E. Leidigh  
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(3) Your summary of the telephone advice concerning transportation provided by The Nature Conservancy to its nature preserve on Santa Cruz Island is correct. At Ms. McGee's suggestion, you have submitted a separate request for consideration of this issue in light of recently adopted Regulation 18228. This question, along with another question presented on behalf of The Nature Conservancy will be addressed by the Commission's Legal Division in a separate letter, which has been assigned file number A-89-248.

If you have any questions about this letter, please call me at (916) 322-5662.

Sincerely,

Kathryn E. Donovan  
General Counsel

A handwritten signature in cursive script that reads "Jeanne Pritchard".

By: Jeanne Pritchard  
Division Chief  
Technical Assistance and  
Analysis Division

enclosure

Law Offices of  
OLSON, CONNELLY, HAGEL & FONG  
April 20, 1989

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Kathryn E. Donovan, General Counsel  
FAIR POLITICAL PRACTICES COMMISSION  
428 "J" Street, Suite 800  
Sacramento, California 95814

HAND DELIVERED

RE: REQUEST FOR FORMAL WRITTEN ADVICE; CONFIRMATION OF  
TELEPHONE ADVICE

Dear Ms. Donovan:

I write on behalf of my client The Nature Conservancy. I seek written confirmation of telephone advice recently provided by Ms. Colleen McGee of the Technical Assistance and Analysis Division. I also seek formal written advice regarding a different but related question.

Confirmation of Telephone Advice

Earlier this week, I asked Ms. McGee a series of questions regarding lobbying. The questions and the answers will be stated below.

1.) Is an employee of a lobbyist employer, who is not a lobbyist (employed full-time primarily to do other duties) attempting to influence legislative or administrative action when that employee discusses pending or potential legislation with a state administrative agency?

Answer: No. Discussion of pending or potential legislation with a state administrative agency does not constitute attempting to influence legislative or administrative action, even with regard to budget items. However, discussions with the Governor's Office regarding signing or vetoing legislation would fall into that category; this would include budget items.

2.) If the same employee contacts a legislator or a legislator's staff to inquire as to the legislator's position on pending or potential legislation, does that constitute attempting to influence legislative or administrative action?

Answer: No. So long as the contact merely involves obtaining information about the legislator's

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LEROY Y. FONG  
ROBERT E. LEIDIGH

OF COUNSEL  
LLOYD G. CONNELLY, Member  
California State Legislature

Letter to Kathryn E. Donovan  
April 20, 1989  
Page Two

position, the employee is not attempting to influence legislative or administrative action. However, if the conversation strays beyond the mere gathering of information and a discussion about the legislation ensues, then the contact counts as one for the purpose of attempting to influence legislative action.

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3.) The Nature Conservancy owns Santa Cruz Island, which it holds as a nature preserve. There is a dirt airstrip on the island, on which only planes operated by The Nature Conservancy may land. (There is a lessee on a portion of the island. The lessee is permitted by The Nature Conservancy to land its own plane for its own use; but the general public is not allowed.)

The Nature Conservancy wishes to take a legislative official on an informational tour of the island to demonstrate the type of activities which The Nature Conservancy undertakes to preserve environmentally sensitive areas.

The only means of reaching the island from the shore is by way of a boat or airplane provided by The Nature Conservancy. The legislator will provide his own transportation to the point of departure on the mainland.

Does the transportation provided out to the island and back to shore (via private airplane) fit within the "informational tour" exclusion under Government Code Section 82028(b)(1)?

This exclusion was first enunciated in the Spellman Opinion, 1 FPPC Ops. 16, No. 75-026 (May 1, 1975). It has been followed in circumstances similar to these in the Advice Letter to Gordon Duffy, No. A-84-084; and in other advice letters as well, such as the Advice Letter to Lance Olson, No. A-85-218; and the Advice Letter to Ro Aguilar, No. A-86-243.

Answer: The Nature Conservancy situation fits within the facts of the Duffy letter and Spellman Opinion. Hence, the transportation to and from the island from the mainland would not constitute a gift within the meaning of Government Code Section 82028, if those interpretations are still valid. However, the staff is unsure of the impact upon those earlier interpretations of recently adopted Regulation 18228. Consequently, the staff suggests that formal written advice be sought on this issue.

#### Formal Written Advice Requests

Legal  
1.) With respect to question 3, above, please advise whether the Spellman Opinion and the Duffy letter are still operative. I

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have reviewed Regulation 18228 and the initial and final statements of reasons in the rulemaking file. It is my conclusion that the regulation does not address nor does it alter, the exclusion for informational materials (and tours) under Government Code Section 82028(b)(1). No mention is made of overruling the Spellman Opinion or any advice letters.

*Legal*

I believe the thrust of Regulation 18228 to be the issue of when travel to various types of events should be considered as a campaign contribution or as a gift. The purpose of the regulation was to establish guidelines for making that distinction. However, its purpose was not to make that a gift which was not otherwise a gift under the statute, simply because travel was somehow involved.

If that were the case, travel provided by a brother or sister of an elected officer or candidate would now be considered gifts to that officer, even though specifically excluded by the statute in Government Code Section 82028(b)(3).

2.) I now raise a different question which my client would like answered as well. The Nature Conservancy is a non-profit, tax exempt corporation under Internal Revenue Code Section 501(c)(3). Contributions to The Nature Conservancy are tax deductible.

It is formed for the scientific and educational purpose of acquiring through private donations environmentally sensitive properties to be held in their natural state. Its mission is to find, protect, and maintain the best examples of communities, ecosystems, and endangered species in the natural world. Thus, The Nature Conservancy is a "bona fide educational organization" within the meaning of Government Code Section 82030(b)(2).

Since reimbursement for travel expenses and per diem received from a bona fide charitable organization is not "income" within the meaning of Government Code Section 82030, wouldn't the transportation discussed in the preceding question, and any other travel (or per diem) provided by The Nature Conservancy, be exempted from being considered a "gift" in any event? The term "income" as defined in Section 82030(a) includes the term "gift."

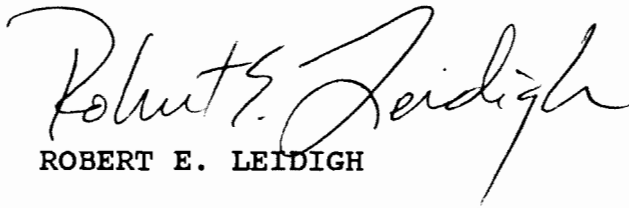
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Conclusion

I ask that you provide written confirmation of the telephone advice discussed herein as well as formal written advice in response to the two questions posed above.

Very truly yours,

OLSON, CONNELLY, HAGEL & FONG

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ROBERT E. LEIDIGH

cc: Donald Duprey  
Regional Counsel  
The Nature Conservancy

Law Offices of

## OLSON, CONNELLY, HAGEL &amp; FONG

April 20, 1989

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Kathryn E. Donovan, General Counsel  
 FAIR POLITICAL PRACTICES COMMISSION  
 428 "J" Street, Suite 800  
 Sacramento, California 95814

HAND DELIVERED

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Very truly yours,

OLSON, CONNELLY, HAGEL & FONG

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ROBERT E. LEIDIGH

cc: Donald Duprey  
Regional Counsel  
The Nature Conservancy



# California Fair Political Practices Commission

April 28, 1989

Robert E. Leidigh  
Olson, Connelly, Hagel & Fong  
300 Capitol Mall, Suite 350  
Sacramento, CA 95814

Re: Letters No. 89-247 and 248

Dear Mr. Leidigh:

Your letter requesting advice under the Political Reform Act was received on April 20, 1989 by the Fair Political Practices Commission. You have requested confirmation of telephone advice provided to you by the Technical assistance and Analysis division, and you have requested written advice on related issues, more appropriately handled by the Legal Division. Accordingly, we have decided to treat your letter as two separate requests.

We will try to confirm your telephone advice as soon as possible. If we determine that a more extensive analysis is necessary, we will contact you. If you have any questions about this portion of your request, please contact Jeanne Pritchard, Chief of the Technical Assistance and Analysis Division. Our file number for this part is 89-247.

If you have any questions concerning the remainder of your request, you may contact Margaret Ellison an attorney in the Legal Division, directly at (916) 322-5901. Our file number for this part is 89-248.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan  
General Counsel

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